

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE XPO LOGISTICS, INC. DERIVATIVE  
LITIGATION

Case No. 19-cv-889-RGA

**STIPULATION AND [PROPOSED] ORDER OF DISMISSAL WITH PREJUDICE**

Plaintiffs, Nominal Defendant XPO Logistics, Inc. (“XPO”), and Individual Defendants Bradley S. Jacobs, John J. Hardig, Gena L. Ashe, AnnaMaria DeSalva, Michael G. Jesselson, Adrian P. Kingshott, Jason D. Papastavrou, and Oren G. Shaffer (the “Individual Defendants,” and together with XPO, “Defendants”), by and through their respective attorneys of record, hereby submit this Stipulation and [Proposed] Order of dismissal with prejudice of this putative consolidated shareholder derivative action (the “Derivative Action”) in light of the following:

WHEREAS, this Derivative Action is related to a class action alleging securities fraud against XPO and its chief executive officer, captioned *Labul v. XPO Logistics, Inc.*, No. 3:18-cv-2062 (D. Conn.) (the “Securities Class Action”), and the allegations in Plaintiffs’ First Amended Consolidated Shareholder Derivative Complaint are based on facts that are substantially similar to the facts on which the allegations in the operative complaint filed in the Securities Class Action on January 3, 2020 were based;

WHEREAS, the defendants in the Securities Class Action moved to dismiss the operative complaint in that action;

WHEREAS, on July 14, 2020, the Court entered an Order staying this Derivative Action pending resolution of a motion to dismiss the Securities Class Action (D.I. 49);

WHEREAS, on March 19, 2021, the district court hearing the Securities Class Action granted the motion to dismiss that action, with prejudice;

WHEREAS, on March 22, 2021, the district court hearing the Securities Class Action

issued judgment in favor of the defendants and closed the case;

WHEREAS, on April 14, 2021, the Court entered an Order further staying this Derivative Action “pending the filing of any notice of appeal in the Securities Class Action and the final resolution of any appeal of the motion to dismiss decision in the Securities Class Action, including any petitions for rehearing in the Second Circuit” (D.I. 53, the “Stay Order,” ¶ 1);

WHEREAS, the Stay Order further provides, in relevant part, that “if the dismissal of the Securities Class Action is affirmed on appeal, Plaintiffs in the Derivative Action shall cause the Derivative Action to be dismissed with prejudice as soon as practicable” (Stay Order, ¶ 2);

WHEREAS, on April 19, 2021, the plaintiffs in the Securities Class Action appealed the dismissal with prejudice of that action to the U.S. Court of Appeals for the Second Circuit;

WHEREAS, on June 30, 2022, the U.S. Court of Appeals for the Second Circuit entered a summary order and judgment affirming the dismissal with prejudice of the Securities Class Action (the “Affirming Order”); and

WHEREAS, the plaintiffs/appellants in the Securities Class Action did not file any petition for rehearing of the Affirming Order before July 14, 2022, which was the applicable deadline for any such petition under Federal Rule of Appellate Procedure 40(a)(1);

IT IS ACCORDINGLY STIPULATED AND AGREED, by the undersigned counsel for Plaintiffs and Defendants, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Paragraph 2 of the Stay Order, that this Derivative Action and all claims asserted in this Derivative Action are hereby dismissed with prejudice, with the parties to bear their own attorneys’ fees and costs.

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Dated: Wilmington, Delaware  
July 25, 2022

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Richard G. Andrews, U.S.D.J.